

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

EUGENE and ELLEN KARPINSKY,

Debtors.

Case No. 05-70630
Chapter 13
Hon. Marci B. McIvor

**OPINION DENYING DIRECTV'S MOTION TO DISMISS CHAPTER 13 CASE
UNDER 11 U.S.C. § 109(e)**

On December 1, 2003, Debtor Eugene Karpinsky filed a petition for relief under Chapter 7 of the Bankruptcy Code (*In re Eugene and Ellen Karpinsky*, Case No. 03-73436)(Bankr. E.D. Mich.)(the Chapter 7 case). On March 3, 2004, DirecTV filed an adversary complaint against Debtor Eugene Karpinsky alleging several causes of action for satellite signal piracy and requesting that any debt arising from the alleged piracy be declared non-dischargeable (*DirecTV v. Eugene Karpinsky*, Adv. No. 04-4256 (Bankr. E.D. Mich.)(the Adversary).

On August 16, 2005, after two days of trial, the Court entered judgment in favor of DirecTV in the Adversary in the amount of \$202,000 on various counts relating to the satellite signal piracy claims. The Court also awarded reasonable attorneys' fees under 47 U.S.C. § 605(e)(3)(B)(ii) and held that the entire debt was non-dischargeable. With respect to attorneys' fees, the Opinion states in pertinent part:

This Court awards DirecTV reasonable attorney's fees and costs under 47 U.S.C. § 605(e)(3)(B)(ii). DirecTV shall file a Fee Application within 30 days of the entry of this Opinion and Order. If Defendant objects to the Fee Application, the Court shall schedule a hearing to determine the appropriate fee award.

DirecTV v. Karpinsky, 328 B.R. 516, 528 (Bankr. E.D. Mich. 2005).

On September 15, 2005, DirecTV filed its Application for Attorneys' Fees requesting an award of \$178,510.25 in attorneys' fees pursuant to the Court's Order and Opinion. On September 16, 2005, Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code. On November 16, 2005, the chapter 7 bankruptcy case was closed.

DirecTV argues that Debtor is not eligible to be a debtor under chapter 13 of the Bankruptcy Code because, as of the date of the filing of his Chapter 13 petition, he owed noncontingent, liquidated, unsecured debt in excess of \$307,675 comprised of the judgment in the amount of \$202,000.00 plus attorneys' fees in the amount of \$178,510.25. DirecTV further argues that the estimate of the amount of non-contingent, liquidated, unsecured debt made by Debtor as set forth in his schedules was not made in good faith.

Debtor argues that, for purposes of § 109(e) eligibility, the amount of Debtor's non-contingent, liquidated unsecured debt is to be determined primarily from Debtor's good faith estimate of his debts according to his schedules, and Debtor's good faith estimate of his non-contingent, liquidated, unsecured debt was only \$235,961.00, well within the jurisdictional limit. Further, Debtor argues that at the time the chapter 13 petition was filed, the attorneys fees were contingent and unliquidated debt because a fee application had not been filed or approved.

ANALYSIS / CONCLUSION

Section 109(e) of the Bankruptcy Code sets forth who may be a debtor under chapter 13. Section 109(e) states:

(e) Only an individual with regular income that owes, on the date of the filing of

the petition, noncontingent, liquidated, unsecured debts of less than \$307,675 and noncontingent, liquidated, secured debts of less than \$922,975, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$307,675 and noncontingent, liquidated, secured debts of less than \$922,975 may be a debtor under chapter 13 of this title.

Under § 109(e), a chapter 13 debtor must have non-contingent, liquidated, unsecured debt totaling an amount less than \$307,675 on the petition date. The Sixth Circuit, in determining a debtor's eligibility under § 109(e), found that courts should "rely primarily upon the Debtor's schedules checking only to see if the schedules were made in good faith on the theory that section § 109(e) considers debts as they exist at the time of filing, not after a hearing." *Comprehensive Accounting Corp. v. Pearson (In re Pearson)*, 773 F.2d 751, 756 (6th Cir. 1985).

In this case, Debtor listed in his schedules non-contingent, liquidated, unsecured debt totaling \$235,961.00, which included the judgment amount of \$202,000.00 but did not include any amounts for attorney fees. Debtor claims that as of the date his chapter 13 petition was filed (September 16, 2005), he had no knowledge of DirecTV's claim for attorney fees in the amount of \$178,510.25, even though DirecTV's application for attorney fees was filed and served the day before the petition was filed (September 15, 2005). This Court finds this assertion to be credible. At the time Debtor filed his chapter 13 petition, it appears that Debtor was unaware of the amount of attorneys' fees billed. The fee application was served on Debtor's former counsel, John Hermann. Debtor himself did not receive a copy of the fee application. Furthermore, Debtor is not a lawyer and had only been billed \$15,000 by John Hermann, the attorney who represented Debtor through

two years of litigation with DirecTV. Given his experience, it would have been reasonable for Debtor to assume that DirecTV's claim for attorney fees would not be in excess of \$71,714.00, the amount necessary to exceed the jurisdictional limit.

Furthermore, this Court finds that at the time of the chapter 13 filing, the debt for the attorneys fees, while noncontingent,¹ was unliquidated because the amount was not yet finally determined. The term "liquidated" is defined as "settled or determined, esp[ecially] by agreement." *Black's Law Dictionary* 941 (7th ed. 1999). In this District, a debt is liquidated if capable of ready computation. See *In re Dow Corning Corp.*, 215 B.R. 346, 356 (Bankr. E.D. Mich. 1997). This Court finds that, in this case, these fees are not liquidated because: 1) this Court has not reviewed or approved the fee application *and*, 2) on its face, the amount requested in the fee application appears to be excessive in light of the facts that the litigation involved issues which have been routinely litigated by DirecTV, and the amount requested was nearly as high as the very substantial award for actual damages.

The Court acknowledges that the schedules filed by Debtor in his chapter 13 are carelessly drafted. Debtor appears to have improperly scheduled a judgment held by Fleet Credit Card Services and to have simply copied the schedules from his former chapter 7 case onto his chapter 13 schedules. Debtor should have taken the time to properly update his financial situation. Nevertheless, this Court finds that absent some intentional misstatement by Debtor for the purpose of avoiding the jurisdictional limit,

¹The obligation was noncontingent because Debtor's obligation to pay "reasonable" attorney fees was clearly stated in the Court's ruling.

carelessness in the preparation of schedules is insufficient to establish “bad faith” for jurisdictional purposes. In this case, it does not appear that the carelessly filed schedules were filed for the purpose of avoiding the jurisdictional limit. Even if Debtor had accurately stated the dollar amount owed to Fleet Credit Card Services, the amount of the noncontingent, liquidated, unsecured debt, is substantially less than the jurisdictional limits imposed by 11 U.S.C. 109(e). This Court finds that the errors on Debtor’s schedules are insufficient for finding the bad faith necessary for the dismissal of this case on jurisdictional grounds.

In summary, this Court finds that, for purposes of determining jurisdiction in this case: (1) Debtor’s failure to anticipate the size of the attorneys’ fees claim was reasonable; (2) the schedules filed by Debtor, although they contain some inaccurate information, were filed in good faith for purposes of determining jurisdiction; and (3) the claim for attorneys fees was unliquidated on the date of the chapter 13 filing. Therefore, pursuant to *Pearson*, the Court relies on the amount set forth in Debtor’s schedules for determining jurisdiction and, based on those amounts, finds that jurisdiction is proper under § 109(e). For these reasons, this Court DENIES DirecTV’s motion to dismiss.

While this Court finds that Debtor is eligible to be a debtor under chapter 13, the Court is not making a ruling on whether Debtor’s plan of reorganization was filed in good faith under 11 U.S.C. § 1325(a)(3). The test used by courts for purposes of evaluating whether a plan has been filed in good faith, is completely different from the test used for evaluating good faith for jurisdictional purposes. See, *Pearson*, 773 F.2d 751 (good faith for purposes of determining jurisdiction under § 109(e)) versus *In re Jones*, 301 B.R. 840

(Bankr. E.D. Mich. 2003)(good faith with respect to plan confirmation). This Court will hold an evidentiary hearing on the issue of good faith with respect to plan confirmation on April 3, 2006 at 2:00 p.m. The court will also consider all other confirmation issues at the hearing. The parties are not required to file briefs, but if they choose to do so, briefs must be filed and served on or before March 31, 2006.

IT IS SO ORDERED.

Entered: March 10, 2006

/s/ Marci B. McIvor
Marci B. McIvor
United States Bankruptcy Judge